IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

FAO.No. 310 of 2007()

AGAINST THE ORDER DATED 15/9/07 IN IA 1314/2007.
IN OS.181/2007 of PRL.SUB COURT,KOTTAYAM
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APPELLANT/COUNTER PETITIONER/5TH DEFENDANT

P.K.POULOSE, S/O. KURIAKOSE,
AGED 55 YEARS, PUTHUSSERIL HOUSE,
KOTHAMANGALAM P.O., KOTHAMANGALAM.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: PETITIONERS/PLAINTIFFS
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1. KUNJAMMA JOHN, W/O. LATE K.K.JOHN,
AGED 77 YEARS, THAYIL HOUSE, MARIYATHURUTHU P.O.,
VARISSERY, PERUMPAIKADU VILLAGE, KOTTAYAM.

2. ASHOKAN, S/O. K.K.JOHN, AGED 41 YEARS,
THAYIL HOUSE, MARIYATHURUTHU P.O.,
VARISSERY, PERUMPAIKADU VILLAGE, KOTTAYAM.

BY ADV. SRI.LIJI.J.VADAKEDOM

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.3938/07 IN FAO.NO.310/07

Dismissed

Sd/- P.R.RAMAN, JUDGE.

13/11/2007 Sd/- V.K.MOHANAN, JUDGE.

True Copy

P.S. TO JUDGE.

P.R. RAMAN & V. K. MOHANAN, JJ.

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F.A.O. NO. 310 OF 2007

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DATED THIS, THE 13TH DAY OF NOVEMBER, 2007.

J U D G M E N T

Raman, J.

This is an appeal against the interim order passed by the Prl. Sub Court, Kottayam, in I.A. No. `1314/2007 in O.S. 181/2007, restraining the appellant herein from inducting any strangers into the plaint schedule property and house, from alienating the share of the plaintiffs in the properties or from committing any waste therein or from changing the structure of the residential house situated in plaint schedule property and from obstructing the plaintiffs from entering into plaint schedule Items 1 to 3 properties.

2. The suit is one for partition and separate possession of 1/3rd share in plaint item Nos. 1 to 3 properties and the building therein along with improvements by metes and bounds with an alternative prayer. A further prayer for a decree for permanent prohibitory injunction against the 5th defendant is also sought for. Along with the plaint, an application was filed for a temporary injunction for reliefs as

referred to above. The trial court, by a well considered order, after adverting to the contentions between the parties, granted an injunction as sought for. It is against the said injunction order that this appeal is preferred.

3. At the time of admission, the direction contained in the impugned order, restraining the appellant herein from obstructing the plaintiffs from entering into the plaint schedule property was stayed. In other words, no stay was granted by this Court with regard to the remaining portion of the order.

4. Heard both sides. Since the suit itself is pending trial, the point for consideration is as to the nature of the directions to be issued so as to preserve the subject matter of the suit and to protect the interest of both sides considering the balance of convenience. It is the specific contention of the appellant herein that he is in possession of the properties. However, this is disputed by the plaintiffs. The appellant is the Power of Attorney Holder of defendants 1 to 4. For the purpose of preserving the interest of both sides, the property in dispute shall not be altered to the disadvantage of the plaintiffs. Hence the court below rightly granted an injunction restraining the defendants from alienating the property or creating any encumbrance thereon or from

changing the structure of the residential house situated in the plaint schedule Item No.1 and also restraining them from committing any waste thereon. This would, in the normal course, satisfy the plaintiffs since status quo as on the date of the plaint will remain to be continued until the disposal of the suit, by virtue of the direction so issued. However, the further direction to the defendants not to obstruct the plaintiffs from entering into plaint schedule Items 1 to 3, in the absence of a prama facie finding as to who is in possession, may not be justified.

5. In the circumstances, the order by which the appellant is prevented from causing obstruction to the plaintiff to enter in to the plaint schedule property is vacated. We do not think any other relief could be granted in this appeal. The remaining directions contained in the order impugned will be confirmed and will continue to be in force till the disposal of the appeal.

If the pleadings are completed and the case is ripe for trial, the trial court shall expedite the trial of the suit itself.

The appeal is disposed of as above.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-